

1 THE HONORABLE MARSHA J. PECHMAN
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10 UNITED STATES DISTRICT COURT
11 FOR THE WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 JUSTIN REESE, STEVEN COX, MICAH
14 WITTENBORN and SHELBY BALL, on
behalf of themselves and all others similarly
situated,

15 Plaintiffs,

16 v.

17 DYCOM INDUSTRIES, INC., a Florida
corporation; PRINCE TELECOM, LLC, a
Delaware limited liability company, f/k/a
PRINCE TELECOM, INC.,

18 Defendants.

19
20 COMPLAINT – CLASS ACTION

21 NO. C09-0606 MJP

22 THIRD AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
RESTITUTION

23 **JURY DEMAND**

24 Plaintiffs, by their undersigned attorneys, for their class action complaint against
Defendants allege as follows:

25 **I. INTRODUCTION**

26 1.1 Nature of Action. Plaintiffs Justin Reese, Steven Cox, Micah Wittenborn, and
Shelby Ball on behalf of themselves and others similarly situated (“Plaintiffs”) bring this action
against Defendants Dycom Industries, Inc. and Prince Telecom, LLC, formerly known as
Prince Telecom, Inc., (collectively “Defendants”) for engaging in a systematic scheme of wage
and hour abuse against non-managerial installation technicians in the State of Washington.

1 This scheme has involved, among other things, failing to pay non-managerial installation
 2 technicians for all hours worked, including overtime, failing to provide the technicians with rest
 3 and meal periods, and making improper deductions from the wages of the technicians.
 4 Plaintiffs seek to recover monetary damages and restitution for the harm they have suffered as a
 5 result of Prince Telecom's unlawful conduct pursuant to the federal Fair Labor Standards Act
 6 and Washington State's wage and hour laws.

7 II. JURISDICTION AND VENUE

8 2.1 Subject-Matter Jurisdiction. This Court has original jurisdiction over the Fair
 9 Labor Standards Act ("FLSA") claims asserted in the action pursuant to 28 U.S.C. § 1331 and
 10 29 U.S.C. § 216(b) and supplemental jurisdiction over the state law claims pursuant to 28
 11 U.S.C. § 1367 and 28 U.S.C. § 1332. Plaintiff Reese is a citizen of Oklahoma, and Defendant
 12 Dycom Industries, Inc. is a citizen of Florida. Likewise, Plaintiff Cox, Plaintiff Wittenborn,
 13 Plaintiff Ball and other Class members are citizens of Washington, whereas Defendant Dycom
 14 Industries, Inc. is a citizen of Florida and Defendant Prince Telecom, LLC, formerly known as
 15 Prince Telecom, Inc., is a citizen of Delaware. Furthermore, the matter in controversy exceeds
 16 the sum or value of \$5,000,000.

17 2.2 Personal Jurisdiction. This Court also has personal jurisdiction over all
 18 Defendants. Defendants regularly conduct business and employ workers in Washington State.
 19 Thus, Defendants have obtained the benefits of the laws of Washington as well as
 20 Washington's commercial and labor markets.

21 2.3 Venue. Venue is proper in King County because Defendants reside and transact
 22 business in King County.

23 2.4 Governing Law. The claims of Plaintiffs and the Class members asserted in this
 24 class action complaint are brought pursuant to the federal Fair Labor Standards Act and
 25 Washington law. The claims of Plaintiffs and the Class members are individual claims and do
 26

1 not unite or enforce a single title or right to which Plaintiffs and the Class have a common and
 2 undivided interest.

3 III. PARTIES

4 3.1 Plaintiff Justin Reese. Plaintiff Reese worked for Defendants as a non-
 5 managerial installation technician in Washington State from approximately July 2006 to July
 6 2008. During that time, Defendants failed to pay Plaintiff Reese for all of the time that he
 7 worked (including overtime), denied him the rest and meal periods to which he was entitled,
 8 and wrongfully deducted expenses from his wages.

9 3.2 Plaintiff Steven Cox. Plaintiff Cox worked for Defendants as a non-managerial
 10 installation technician in Washington State from approximately October 2005 to August 2008.
 11 During that time, Defendants failed to pay Plaintiff Cox for all of the time that he worked
 12 (including overtime), denied him the rest and meal periods to which he was entitled, and
 13 wrongfully deducted expenses from his wages.

14 3.3 Plaintiff Micah Wittenborn. Plaintiff Wittenborn worked for Defendants as a
 15 non-managerial installation technician in Washington State from approximately January 2005
 16 to May 2007. During that time, Defendants failed to pay Plaintiff Wittenborn for all of the time
 17 that he worked (including overtime), denied him the rest and meal periods to which he was
 18 entitled, and wrongfully deducted expenses from his wages.

19 3.4 Plaintiff Shelby Ball. Plaintiff Ball worked for Defendants as a non-managerial
 20 installation technician in Washington State from approximately February 2000 to February
 21 2008. During that time, Defendants failed to pay Plaintiff Ball for all of the time that he
 22 worked (including overtime), denied him the rest and meal periods to which he was entitled,
 23 and wrongfully deducted expenses from his wages.

24 3.5 Defendant Dycom Industries, Inc. Dycom Industries, Inc. is a Florida
 25 corporation with its headquarters in Palm Beach Gardens, Florida. Dycom Industries, Inc. has
 26 several offices in Washington and conducts business throughout the State, including King

1 County. Dycom Industries, Inc. employs hundreds of non-managerial installation technicians
 2 in Washington State.

3 3.6 Defendant Prince Telecom, LLC, formerly known as Prince Telecom, Inc.
 4 Prince Telecom, LLC, formerly known as Prince Telecom, Inc., is a Delaware limited liability
 5 company with its headquarters in New Castle, Delaware. Prince Telecom, LLC is the
 6 successor in interest to Prince Telecom, Inc. and Prince Telecom Holdings, Inc. The actions of
 7 Defendants as alleged in this complaint include the relevant actions of Prince Telecom, Inc.
 8 Prince Telecom, LLC has several offices in Washington and conducts business throughout the
 9 State, including King County. Prince Telecom, LLC employs hundreds of non-managerial
 10 installation technicians in Washington State.

11 **IV. CLASS ACTION ALLEGATIONS**

12 4.1 Class Definition: Pursuant to Rule 23 of the Federal Rules of Civil Procedure,
 13 Plaintiffs brings this case as a class action on behalf of a Class defined as follows:

14 All current and former employees of Defendants who
 15 worked as non-managerial installation technicians in the
 16 state of Washington at any time from May 1, 2005
 17 through the date of final disposition of this action.

18 4.2 Excluded from the Class are Defendants, any entity in which Defendants have a
 19 controlling interest or which has a controlling interest in Defendants, and Defendants' legal
 20 representatives, assignees, and successors. Also excluded are the judge to whom this case is
 21 assigned and any member of the judge's immediate family.

22 4.3 Numerosity. Plaintiffs believe there are hundreds of current and former non-
 23 managerial installation technicians composing the Class. The members of the Class are so
 24 numerous that joinder of all members is impracticable. Moreover, the disposition of the claims
 25 of the Class in a single action will provide substantial benefits to all parties and the Court.

26 4.4 Commonality. There are numerous questions of law and fact common to
 27 Plaintiffs and Class members. These questions include, but are not limited to, the following:

- 1 a. Whether Defendants have engaged in a common course of failing to
- 2 compensate non-managerial installation technicians for all hours worked, including overtime;
- 3 b. Whether Defendants have engaged in a common course of requiring or
- 4 permitting non-managerial installation technicians to work off the clock without compensation;
- 5 c. Whether Defendants have engaged in a common course of requiring or
- 6 permitting non-managerial installation technicians not to report all hours worked;
- 7 d. Whether Defendants have engaged in a common course of failing to
- 8 maintain true and accurate time records for all hours worked by non-managerial installation
- 9 technicians;
- 10 e. Whether Defendants have engaged in a common course of altering the
- 11 time records of non-managerial installation technicians;
- 12 f. Whether Defendants have engaged in a common course of failing to
- 13 provide non-managerial installation technicians with rest periods;
- 14 g. Whether Defendants have engaged in a common course of failing to
- 15 provide non-managerial installation technicians with meal periods;
- 16 h. Whether Defendants have engaged in a common course of making
- 17 unlawful deductions from the wages of non-managerial installation technicians;
- 18 i. Whether Defendants have violated RCW 49.46.130;
- 19 j. Whether Defendants have violated WAC 296-128-550;
- 20 k. Whether Defendants have violated RCW 49.46.090;
- 21 l. Whether Defendants have violated WAC 296-126-021;
- 22 m. Whether Defendants have violated RCW 49.12.020;
- 23 n. Whether Defendants have violated WAC 296-126-092;
- 24 o. Whether Defendants have violated RCW 49.48.010;
- 25 p. Whether Defendants have violated WAC 296-126-025;
- 26 q. Whether Defendants have violated WAC 296-126-028;

1 r. Whether Defendants have violated RCW 49.52.050;
 2 s. Whether Defendants have violated RCW 19.86.010 – .920;
 3 t. Whether Defendants have violated 29 U.S.C. § 206;
 4 u. Whether Defendants have violated 29 U.S.C. § 207;
 5 v. Whether Plaintiffs are entitled to liquidated damages pursuant to 29
 6 U.S.C. § 216(b); and

7 w. The nature and extent of Class-wide injury and the measure of
 8 compensation for such injury.

9 4.5 Typicality. The claims of the representative Plaintiffs are typical of the claims
 10 of the Class. The Plaintiffs worked for Defendants as non-managerial installation technicians
 11 and are members of the proposed Class. Plaintiffs' claims, like the claims of the Class, arise
 12 out of the same common course of conduct by Defendants and are based on the same legal and
 13 remedial theories.

14 4.6 Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class.
 15 Plaintiffs have retained competent and capable attorneys who are experienced trial lawyers with
 16 significant experience in complex and class action litigation, including employment law.
 17 Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the
 18 Class and have the financial resources to do so. Neither Plaintiffs nor their counsel have
 19 interests that are contrary to or that conflict with those of the proposed Class.

20 4.7 Predominance. Defendants have engaged in a common course of wage and hour
 21 abuse toward Plaintiffs and members of the Class. The common issues arising from this
 22 conduct that affect Plaintiffs and members of the Class predominate over any individual issues.
 23 Adjudication of these common issues in a single action has important and desirable advantages
 24 of judicial economy.

25 4.8 Superiority. Plaintiffs and Class members have suffered and will continue to
 26 suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. Absent a

1 class action, however, most Class members likely would find the cost of litigating their claims
 2 prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation
 3 because it conserves judicial resources, promotes consistency and efficiency of adjudication,
 4 provides a forum for small claimants, and deters illegal activities. Plaintiffs and their counsel
 5 are unaware of any litigation that has already been commenced concerning Defendants' wage
 6 and hour abuses in Washington. Litigation of the claims should occur in this Court as all
 7 claims are brought under federal and Washington law. There will be no significant difficulty in
 8 the management of this case as a class action. The Class members are readily identifiable from
 9 Defendants' records.

10 V. SUMMARY OF FACTUAL ALLEGATIONS

11 5.1 Common Course of Conduct. Defendants have engaged in, and continue to
 12 engage in, a common course of wage and hour abuse against non-managerial installation
 13 technicians in the state of Washington.

14 5.2 Overtime. Defendants' common course of wage and hour abuse includes
 15 routinely failing to record and compensate non-managerial installation technicians for all hours
 16 worked. In particular, Defendants have required or permitted non-managerial installation
 17 technicians to record fewer hours than they actually worked in order to avoid paying overtime
 18 premiums. Defendants have had actual or constructive knowledge of the fact that non-
 19 managerial installation technicians are not being compensated for all hours worked, including
 20 overtime hours.

21 5.3 Off-the-Clock Work. Defendants' common course of wage and hour abuse
 22 includes routinely failing to compensate non-managerial installation technicians for off-the-
 23 clock work. For example, Defendants regularly fail to provide non-managerial installation
 24 technicians with meal periods, yet Defendants require or permit the technicians to deduct meal
 25 time from their records of hours worked. Defendants also require or permit non-managerial
 26 installation technicians to do other work off the clock, such as completing paperwork and forms

1 and calling customers. As a result of this off-the-clock work, Defendants' non-managerial
 2 installation technicians are deprived of wages, including overtime wages. Defendants have had
 3 actual or constructive knowledge of the fact that non-managerial installation technicians are not
 4 being compensated for off-the-clock work.

5 5.4 Rest and Meal Periods. Defendants' common course of wage and hour abuse
 6 includes routinely failing to provide non-managerial installation technicians with rest and meal
 7 periods as required by law. Defendants have had actual or constructive knowledge of the fact
 8 that non-managerial installation technicians are not being allowed proper rest and meal periods.

9 5.5 Wage Deductions. Defendants' common course of wage and hour abuse
 10 includes routinely making improper deductions from the wages of non-managerial installation
 11 technicians. This includes but is not necessarily limited to the following: deductions for the
 12 purchase of tools and equipment that are required or necessary to perform the job; deductions
 13 for loss or damage of tools and equipment that are required or necessary to perform the job;
 14 deductions for cell phones that are required or necessary to perform the job; deductions for the
 15 purchase of uniforms; deductions for insurance on company vehicles. In addition, Defendants
 16 require non-managerial installation technicians to pay for the fuel necessary to transport
 17 company vehicles to and from job sites. These fuel expenses are incurred in the furtherance of
 18 Defendants' interest because transportation to and from job sites is incident of and necessary to
 19 the technicians' employment. Defendants fail to fully reimburse the non-managerial
 20 installation technicians for those fuel expenses and as a result, the unreimbursed out-of-pocket
 21 expenses are essentially deducted from the wages of the technicians. Defendants derive a
 22 financial profit or benefit from all of these deductions. Defendants have had actual or
 23 constructive knowledge of the fact that these deductions are being taken from the wages of
 24 non-managerial installation technicians.

VI. FIRST CLAIM FOR RELIEF
(Violations of RCW 49.46.130 and WAC 296-128-550 —
Failure to Pay Overtime)

6.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

6.2 RCW 49.46.130 provides that "no employer shall employ any of his employees for a workweek longer than 40 hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

6.3 WAC 296-128-550 provides that “employees who are compensated on a . . . piece rate . . . basis, rather than an hourly wage rate, unless specifically exempt, are entitled to one and one-half times the regular rate of pay for all hours worked in excess of 40 per week.”

6.4 WAC 296-128-550 further provides that overtime “may be paid at one and one-half times the piecework rate during the overtime period, or the regular rate of pay may be determined by the amount of compensation received per week by the total number of hours worked that week. The employee is entitled to one and one-half times the regular rate arrived at for all hours worked in excess of 40 per week.”

6.5 By the actions alleged above, including the failure to pay non-managerial technicians for all hours worked in excess of 40 per week, Defendants have violated the provisions of RCW 49.46.130 and WAC 296-128-550.

6.6 As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been deprived of compensation in amounts to be determined at trial and pursuant to RCW 49.46.090, Plaintiffs and the Class are entitled to recovery of such damages, including interest thereon, as well as attorneys' fees and costs.

VII. SECOND CLAIM FOR RELIEF
(Violations of RCW 49.46.090 and WAC 296-126-021 —
Failure to Pay Minimum Wage)

7.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

7.2 RCW 49.46.090 provides that employers must pay employees all wages to which the employees are entitled under the Washington Minimum Wage Act. If the employer fails to do so, RCW 49.46.090 requires that the employer pay the employees the full amount of the statutory minimum wage rate less any amount actually paid to the employee.

7.3 WAC 296-126-021 provides that where employees are paid on a piecework basis, wholly or partially, “[t]he total wages paid for such period shall be computed on the hours worked in that period resulting in no less than the applicable minimum wage rate.”

7.4 By the actions alleged above, including the failure to pay non-managerial technicians for all hours worked per week, Defendants have violated the provisions of RCW 49.46.090 and WAC 296-126-021.

7.5 As a result of the unlawful acts of Defendants, Plaintiffs and Class members have been deprived of compensation in amounts to be determined at trial and, pursuant to RCW 49.46.090, are entitled to recovery of such damages, including interest thereon, as well as attorneys' fees and costs.

VIII. THIRD CLAIM FOR RELIEF
(Violations of RCW 49.12.020 and WAC 296-126-092 —
Failure to Provide Rest and Meal Periods)

8.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

8.2 RCW 49.12.010 provides that “[t]he welfare of the state of Washington demands that all employees be protected from conditions of labor which have a pernicious effect on their health. The state of Washington, therefore, exercising herein its police and

sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect."

8.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in any industry or occupation within the state of Washington under conditions of labor detrimental to their health.”

8.4 Pursuant to RCW 49.12.005 and WAC 296-126-002, conditions of labor "means and includes the conditions of rest and meal periods" for employees.

8.5 WAC 296-126-092 provides that employees shall be allowed certain paid rest and meal periods during their shifts.

8.6 By the actions alleged above, including the failure to provide non-managerial installation technicians with proper rest and meal periods, Defendants have violated the provisions of RCW 49.12.020 and WAC 296-126-092.

8.7 As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been deprived of compensation in amounts to be determined at trial, and Plaintiffs and the Class are entitled to the recovery of such damages, including interest thereon, as well as attorneys' fees pursuant to RCW 49.48.030 and costs.

**IX. FOURTH CLAIM FOR RELIEF
(Violations of RCW 49.48.010 —
Failure to Pay Wages Owed at Termination)**

9.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

9.2 RCW 49.48.010 provides that “[w]hen any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period.”

9.3 By the actions alleged above—including the failure to compensate non-managerial installation technicians for all hours worked (such as overtime and off-the-clock

1 work), and the failure to compensate technicians for missed rest breaks—Defendants have
2 violated the provisions of RCW 49.48.010.

3 9.4 As a result of Defendants' unlawful acts, Plaintiffs and the Class have been
4 deprived of compensation in amounts to be determined at trial, and Plaintiffs and Class
5 members are entitled to such damages, including interest thereon, as well as attorneys' fees
6 pursuant to RCW 49.48.030 and costs.

X. FIFTH CLAIM FOR RELIEF

**(Violations of RCW 49.48.010, RCW 49.12.450, and WAC 296-126-025 —
Unlawful Deductions from Final Wages)**

9 10.1 Plaintiffs reallege and incorporate by reference each and every allegation set
10 forth in the preceding paragraphs.

11 10.2 RCW 49.48.010 provides that it is unlawful “for any employer to withhold or
12 divert any portion of an employee’s wages.”

13 10.3 RCW 49.12.450 provides that employers may not make deductions from
14 employee wages for uniforms.

15 10.4 WAC 296-126-025 provides that an employer may not make deductions from an
16 employee's final wages except in limited circumstances.

17 10.5 By the actions alleged above, Defendants have violated the provisions of RCW
18 49.48.010, RCW 49.12.450, and WAC 296-126-025.

19 10.6 As a result of Defendants' unlawful acts, Plaintiffs and the Class have been
20 deprived of compensation in amounts to be determined at trial, and Plaintiffs and Class
21 members are entitled to such damages, including interest thereon, as well as attorneys' fees
22 pursuant to RCW 49.48.030 and costs.

XI. SIXTH CLAIM FOR RELIEF

**(Violations of RCW 49.12.020, RCW 49.12.450, and WAC 296-126-028 —
Unlawful Deductions from Wages During Ongoing Employment)**

25 11.1 Plaintiffs reallege and incorporate by reference each and every allegation set
26 forth in the preceding paragraphs.

1 11.2 RCW 49.12.010 provides that “[t]he welfare of the state of Washington
2 demands that all employees be protected from conditions of labor which have a pernicious
3 effect on their health. The state of Washington, therefore, exercising herein its police and
4 sovereign power declares that inadequate wages and unsanitary conditions of labor exert such
5 pernicious effect.”

11.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in
any industry or occupation within the state of Washington under conditions of labor detrimental
to their health.”

9 11.4 Improper deductions constitute a withholding of wages that renders the wages
10 "inadequate" under RCW 49.12.010.

11 11.5 RCW 49.12.450 provides that employers may not make deductions from
12 employee wages for uniforms.

13 11.6 WAC 296-126-028 provides that an employer may not make deductions from an
14 employee's wages during ongoing employment except in limited circumstances.

15 11.7 By the actions alleged above, Defendants have violated the provisions of RCW
16 49.12.020, RCW 49.12.450, and WAC 296-126-028.

17 11.8 As a result of the wrongful acts of Defendants, Plaintiffs and Class members
18 have been deprived of compensation in amounts to be determined at trial, and Plaintiffs and
19 Class members are entitled to recovery of such damages, including interest thereon, as well as
20 attorneys' fees pursuant to RCW 49.48.030 and costs.

**XII. SEVENTH CLAIM FOR RELIEF
(Violation of RCW 49.52.050 —
Willful Refusal to Pay Wages)**

23 12.1 Plaintiffs reallege and incorporate by reference each and every allegation set
24 forth in the preceding paragraphs.

12.2 RCW 49.52.050 provides that any employer or agent of any employer who,
13 “[w]ilfully and with intent to deprive the employee of any party of his wages, shall pay any

1 employee a lower wage than the wage such employer is obligated to pay such employee by any
 2 statute, ordinance, or contract" shall be guilty of a misdemeanor. The statute further provides
 3 that any employer or agent of any employer who "[s]hall collect or receive from any employee
 4 a rebate of any part of wages theretofore paid by such employer to such employee" shall be
 5 guilty of a misdemeanor.

6 12.3 Defendants' violations of RCW 49.46.130 and WAC 296-128-550, as discussed
 7 above, were willful and thus constitute violations of RCW 49.52.050.

8 12.4 Defendants' violations of RCW 49.46.090 and WAC 296-126-021, as discussed
 9 above, were willful and thus constitute violations of RCW 49.52.050.

10 12.5 Defendants' violations of RCW 49.12.020 and WAC 296-126-092, as discussed
 11 above, were willful and thus constitute violations of RCW 49.52.050.

12 12.6 Defendants' violations of RCW 49.48.010, as discussed above, were willful and
 13 thus constitute violations of RCW 49.52.050.

14 12.7 Defendants' violations of RCW 49.48.010, RCW 49.12.450, and WAC 296-
 15 126-025, as discussed above, were willful and thus constitute violations of RCW 49.52.050.

16 12.8 Defendants' violations of RCW 49.12.020, RCW 49.12.450, and WAC 296-
 17 126-028, as discussed above, were willful and thus constitute violations of RCW 49.52.050.

18 12.9 RCW 49.52.070 provides that any employer who violates the provisions of
 19 RCW 49.52.050 shall be liable in a civil action for twice the amount of wages withheld,
 20 attorneys' fees, and costs.

21 12.10 By the actions alleged above, Defendants have violated the provisions of
 22 RCW 49.52.050.

23 12.11 As a result of the willful, wrongful acts of Defendants, Plaintiffs and the Class
 24 have been deprived of compensation in amounts to be determined at trial and pursuant to
 25 RCW 49.52.070, Plaintiffs and the Class are entitled to recovery of twice such damages,
 26 including interest thereon, as well as attorneys' fees and costs.

**XIII. EIGHTH CLAIM FOR RELIEF
(Violation of RCW 19.86.010 – .920 –
Unfair or Deceptive Acts or Practices)**

13.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

13.2 Defendants have engaged in unfair or deceptive acts or practices by engaging in the following courses of conduct: (i) failing to pay non-managerial installation technicians for all hours worked, including overtime; (ii) requiring or permitting non-managerial installation technicians to work off the clock; (iii) failing to maintain true and accurate time records; (iv) failing to provide non-managerial installation technicians with proper rest and meal breaks; (v) improperly deducting expenses from the wages of non-managerial installation technicians; (vi) violating RCW 49.46.130 and WAC 296-128-550; (vii) violating RCW 49.46.090 and WAC 296-126-021; (viii) violating RCW 49.12.020 and WAC 296-126-092; (ix) violating RCW 49.48.010; (x) violating RCW 49.12.450; (xi) violating WAC 296-126-025 and WAC 296-128-028; and (xii) violating RCW 49.52.050.

13.3 Defendants' unfair and deceptive acts and practices repeatedly occurred in Defendants' trade or business and were capable of deceiving a substantial portion of the public, particularly since Defendants solicit non-managerial installation technicians from Washington's general labor market.

13.4 Defendants unfair and deceptive acts and practices affect the public interest because they are a repeated part of Defendants' general course of business and have impacted numerous individuals. Moreover, Defendants receive services from non-managerial installation technicians for which Defendants do not pay, unlike Defendants' competitors.

13.5 As a direct and proximate cause of Defendants' unfair and deceptive acts and practices, Plaintiffs and the Class have been injured and are entitled to recover treble damages, attorneys' fees, and costs pursuant to RCW 19.86.090.

**XIV. NINTH CLAIM FOR RELIEF
(Violation of the FLSA, 29 U.S.C. §§ 201–19,
Failure to Pay Minimum Wage and Overtime)**

14.1 Plaintiffs incorporate by reference all other paragraphs of this Third Amended Complaint as if fully set forth herein and further alleges as follows:

14.2 Federal wage and hour law requires that employers pay their employees minimum wages for every hour worked and overtime pay wages when employees work more than forty hours in a week.

14.3 By failing to pay their employees minimum wages for every hour worked and failing to pay overtime, based on the actions alleged above, Defendants violated the FLSA.

14.4 Defendants' violation of the FLSA was willful because they knew or showed
reckless disregard for the matter of whether their conduct was prohibited by the FLSA.

14.5 As a result of Defendants' wrongful acts, Plaintiff and the proposed Class have been deprived of their overtime wages in amounts to be determined at trial, and pursuant to 29 U.S.C. § 216(b) are entitled to recovery of liquidated damages of twice such amounts, including interest thereon, attorneys' fees, and costs.

XV. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members of the Class, pray for judgment against Defendants as follows:

15.1 Certification of the proposed plaintiff Class;

15.2 A declaration that Defendants are financially responsible for notifying all Class members of its wage and hour violations;

15.3 Appoint Plaintiffs Reese, Cox, Wittenborn, and Ball as representatives of the Class;

15.4 Appoint the undersigned counsel as counsel for the Class;

15.5 Declare that Defendants' actions complained of herein violate RCW 49.46.130, WAC 296-128-550, RCW 49.46.090, WAC 296-126-021, RCW 49.12.020, WAC 296-126-

1 092, RCW 49.48.010, RCW 49.12.450, WAC 296-126-025, WAC 296-126-028, RCW
2 49.52.050, RCW 19.86.010 – .920, 29 U.S.C. § 206 and 29 U.S.C. § 207;

3 15.6 Enjoin Defendants and their officers, agents, successors, employees,
4 representatives, and any and all persons acting in concert with Defendants, as provided by law,
5 from engaging in the unlawful and wrongful conduct set forth herein;

6 15.7 Award Plaintiffs and the Class compensatory and exemplary damages, as
7 allowed by law;

8 15.8 Award Plaintiffs and the Class attorneys' fees and costs, as allowed by law;

9 15.9 Award Plaintiffs and the Class prejudgment and post-judgment interest, as
10 provided by law; and

11 15.10 Grant such other and further relief as the Court deems necessary, just, and
12 proper.

13 **XVI. JURY DEMAND**

14 Plaintiffs hereby demand a trial by jury.

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DATED this 10th day of December, 2009.

TERRELL MARSHALL & DAUDT PLLC

By: /s/ Toby J. Marshall, WSBA # 32726

Beth E. Terrell, WSBA #26759
Email: bterrell@tmdlegal.com
Toby J. Marshall, WSBA #32726
Email: tmarshall@tmdlegal.com
Jennifer R. Murray, WSBA #36983
Email: jmurray@tmdlegal.com
3600 Fremont Avenue North
Seattle, Washington 98103
Telephone: 206.816.6603
Facsimile: 206.350.3528

THE SCOTT LAW GROUP, PS

Darrell W. Scott, WSBA #20241
Email: darrellscott@mac.com
Matthew J. Zuchetto, WSBA #33404
Email: matthewzuchetto@mac.com
926 West Sprague Avenue, Suite 680
Spokane, Washington 99201
Telephone: 509.455.3966
Facsimile: 509.455.3906

Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I, Toby J. Marshall, hereby certify that on December 10, 2009, I electronically filed the
3 foregoing with the Clerk of the Court using the CM/ECF system which will send notification of
such filing to the following:

5 DLA PIPER US LLP

6 Stellman Keehnle

7 Email: stellman.keechnel@dlapiper.com

701 Fifth Ave., Suite 7000

8 Seattle, Washington 98104-7044

Telephone: 206.839.4800

THE SCOTT LAW GROUP, PS

Darrell W. Scott, WSBA #20241

Email: darrellscott@mac.com

Matthew J. Zuchetto, WSBA #33404

Email: matthewzuchetto@mac.com

926 West Sprague Avenue, Suite 680

Spokane, Washington 99201

Telephone: 509.455.3966

Facsimile: 509.455.3906

11 *Attorney for Defendants*

12 *Co-counsel for Plaintiffs*

13 DATED this 10th day of December, 2009.

14 TERRELL MARSHALL & DAUDT PLLC

15 By: /s/ Toby J. Marshall, WSBA # 32726

16 Beth E. Terrell, WSBA #26759

17 Email: bterrell@tmlegal.com

18 Toby J. Marshall, WSBA #32726

19 Email: tmarshall@tmlegal.com

20 Jennifer R. Murray, WSBA #36983

21 Email: jmurray@tmlegal.com

22 3600 Fremont Avenue North

23 Seattle, Washington 98103

24 Telephone: 206.816.6603

25 Facsimile: 206.350.3528